

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

American Transmission Systems, Inc.  
PJM Interconnection, L.L.C.

Docket Nos. EC02-71-001 and  
ER02-1865-001

ORDER ON REHEARING

(Issued May 20, 2003)

1. On November 27, 2002, American Transmission Systems, Inc (ATSI) filed a request for rehearing of the Commission's October 30, 2002 order (October 30 Order). As discussed below, the Commission denies ATSI's request for rehearing.

**Background**

2. On May 21, 2002, ATSI and PJM Interconnection, L.L.C. (PJM) filed a joint application pursuant to Section 203 of the Federal Power Act (FPA) for approval of the transfer by ATSI of operational control over a 4.3 mile section of the Sammis-Wylie Ridge Line, and associated substation equipment located at the W.H. Sammis Plant in Stratton, Ohio (Sammis). Additionally, PJM filed, pursuant to Section 205 of the FPA, three executed agreements related to the transfer under which ATSI would become a member of PJM.

3. The October 30 Order found the agreements to be unjust and unreasonable, and rejected them pursuant to section 205 and 206 of the FPA.<sup>1</sup> Specifically, the Commission found that accepting the agreements would encourage piecemeal RTO development which was inconsistent with its policy of developing large regional transmission organizations based on natural markets. The Commission noted that in previous RTO orders it had expressed concern regarding RTO boundaries being drawn between certain unaffiliated utilities. Given these concerns, the Commission was not willing to start drawing RTO

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<sup>1</sup> In light of the Commission's rejection of the agreements, the October 30 Order did not address ATSI's application pursuant to section 203 of the FPA.

boundaries within ATSI under the specific circumstances present in the filing. In addition, the Commission stated that the physical and operational integration and interconnection of specific ATSI transmission assets with PJM as a result of accepting the agreements would raise serious cost allocation, rate design, and discrimination issues, among others, that would make such a transfer untenable.

### **Request for Rehearing**

4. On rehearing, ATSI argues that the Commission's summary rejection of the agreements was contrary to its lawful authority under the FPA. ATSI contends that the Commission erred by failing to engage in reasoned decision-making in rejecting the agreements. Specifically, ATSI asserts that the Commission did not explain how accepting the agreements would encourage piecemeal RTO development or undermine its policy of developing large RTOs based on natural markets. It contends that the fact that ATSI would be a member of both PJM and MISO after the transfer is not inconsistent with Commission RTO policy. Moreover, it asserts that the October 30 Order's finding that the acceptance of the agreements would raise "serious cost allocation, rate design, and discrimination issues" were nothing more than mere speculation, unsupported by any evidence in the record, and, thus, not reasoned decision-making.

5. ATSI further argues that the Commission erred in rejecting the agreements without any meaningful review and solely on the grounds that the transfer associated with the agreements was inappropriate. It asserts that the Commission in the October 30 Order did not address any of the specific terms or conditions of the agreements, but rather based its decision on a review of the transfer of operational control that would result from the Commission's acceptance of those agreements. ATSI contends that it was the consequences of this transfer that the Commission found inappropriate, and that, in this regard, the October 30 Order is in direct conflict with the recent decision of the D.C. Circuit in Atlantic City Electric Company, et al. v. FERC, 295 F.3d 1 (D.C. Cir. 2002) (Atlantic City).<sup>2</sup>

### **Discussion**

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<sup>2</sup>ATSI argues that the D.C. Circuit's decision in Atlantic City does not permit the Commission to use its review of the underlying agreements pursuant to Section 205 as a pretext for the defacto review and rejection of the transfer associated with those agreements, which ATSI contends the Commission did in the October 30 Order.

6. The Commission is not persuaded by ATSI's arguments. Accordingly, ATSI's request for rehearing is denied.

7. ATSI is mistaken in its assertion that the Commission rejected the agreements without any meaningful review and solely on the grounds that the transfer associated with the agreements was inappropriate. Through the agreements, ATSI sought (1) to become a member of PJM, (2) to physically and operationally integrate ATSI's section of the Sammis-Wylie Ridge Line and the Sammis Substation with the PJM system, and (3) to interconnect Sammis with the PJM transmission system in the PJM West region and have Sammis operated in accordance with the rules and procedures pertaining to generation in the PJM Control Area. The Commission, through its review of the agreements, found that, given the specific circumstances of the filing, (1) ATSI's becoming a member of PJM was unjust and unreasonable, (2) the physical and operational integration of ATSI's section of the Sammis-Wylie Ridge Line and the Sammis Substation with the PJM system was unjust and unreasonable, and (3) the interconnection of Sammis with the PJM transmission system was unjust and unreasonable. The Commission's decision was therefore based on its review of the agreements and the resulting outcome of accepting the agreements and not the transfer itself.

8. Moreover, that the Commission in the October 30 Order did not address any of the specific terms or conditions of the agreements is of no import. In reviewing the agreements in their entirety, the Commission determined that the agreements themselves, and the resulting transfer of the operational control that would result from the Commission's acceptance of those agreements, were unjust and unreasonable. It was therefore not necessary for the Commission to undertake a specific term by term analysis of the agreements where it determined that, as a whole, the agreements were unjust and unreasonable.

9. ATSI's reliance on Rockland Electric Company (Rockland)<sup>3</sup> and Alliance Companies, et al. (Alliance)<sup>4</sup> is misplaced. The Commission's concern with regard to piecemeal, asset-by-asset RTO development is not with the possibility that one transmission owner may belong to more than one RTO, but rather that distinct integrated transmission facilities within one transmission owner may be separated into two RTOs. Both Rockland and Alliance involve the separation of distinct corporate divisions or entire companies into separate RTO's as opposed to the separation of distinct transmission facilities within one transmission owner or company as is the case here. Moreover that the

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<sup>3</sup>97 FERC ¶ 61,357 (2001).

<sup>4</sup>100 FERC ¶ 61,137 (2002).

facilities to be transferred herein were fully integrated to ATSI's system distinguishes this situation from that in the above-referenced cases.

10. Although the October 30 Order did not address ATSI's application pursuant to Section 203 of the FPA, ATSI argues that the Commission, in reality, was basing its decision on an analysis of the consequence of the transfer of assets under Section 203 and that, in this regard, the October 30 Order was in direct conflict with the recent decision of the D.C. Circuit in Atlantic City. As discussed above, the Commission's findings in the October 30 Order were not based on the consequences of the Section 203 transfer, but were based on a finding that the agreements providing for these facilities to be part of the PJM scheduling system were unjust and unreasonable under Section 205. Moreover, ATSI is mistaken in its assertion that the Commission could not require a Section 203 filing to transfer control of the assets. On December 19, 2002, the Commission issued an order on the Atlantic City remand wherein it concluded that the transfer of operational control of facilities to and from an RTO is a disposition of facilities necessitating the Commission's prior review under Section 203 of the FPA.<sup>5</sup> The Commission herein concludes that the transfer of assets is not in the public interest because of its effects on rates and competition. The transfer would encourage piecemeal, asset-by-asset RTO development and create cost allocation, rate design and discrimination issues which would adversely affect competition and rates. As stated in the October 30 Order, parties have raised legitimate concerns regarding rate pancaking for transactions crossing RTO borders and ATSI's having a potential advantage because of the proposed transfer. Moreover, splitting of assets among RTOs could well create difficult cost allocation and rate design problems due to the need to allocate overhead and other general costs to individual assets in order to determine rates.

The Commission orders:

ATSI's request for rehearing is denied.

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<sup>5</sup>Pennsylvania-New Jersey-Maryland Interconnection, et al., 101 FERC ¶ 61,318 (2002), reh'g pending.

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By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.